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**DAMAGES IN ACTIONS OF TORT, WHERE IMPOSSIBLE TO SEPARATE ACTIONABLE FROM NON-ACTIONABLE INJURIES.**—In an action of tort, if it be impossible, in the nature of the case, to distinguish between the damage arising from the actionable injury, and damage which has another origin, it is held, in *Jenkins v. Pennsylvania R. Co.* (N. J.), 57 L. R. A. 309, that the jury should be left to make from the evidence the best estimate in their power as reasonable men, and award to the plaintiff compensatory damages for the actionable injury.

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**SALES—BREACH OF WARRANTY—MEASURE OF DAMAGES.**—The measure of damage for breach of warranty of the capacity of a kiln for drying lumber, when there is no kiln of the agreed capacity on the market, is held, in *Huyett-Smith Mfg. Co. v. Gray* (N. C.), 57 L. R. A. 193, not to be the difference between the value of the kiln sold and one of the required capacity, but the difference between the value of the apparatus delivered and the contract price.

A note to this case reviews the authorities as to damages for breach of contract on sale of article that has no market price.

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**PATENTS—INFRINGEMENT SUITS—LACHES.**—Under ordinary circumstances a suit in equity will not be stayed before, and will be stayed after, the time fixed by the analogous statute of limitations at law. But if unusual conditions or extraordinary circumstances make it inequitable to allow the prosecution after a briefer, or to forbid its maintenance after a longer, period than that fixed by the statute, the chancellor will not be bound by it, but will determine the extraordinary case in accordance with the equities which condition it. *Ide v. Carpet Co.* (C. C. A.), 115 Fed. 137. Citing *Kelley v. Boettcher* (C. C. A.), 85 Fed. 55.

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**LOST WILL—ESTOPPEL—LACHES OF DEVISEE.**—The negligent placing of a will so that its existence is not known for several years after testator's death, and the laches of the devisee in not producing it, are held, in *Reid v. Benge* (Ky.), 57 L. R. A. 253, not to estop him from asserting his claim against one who has acquired title from the heir, at any time before the right to probate or register the will is barred.

The effect of delay in probating wills is discussed in a note to the case.

Until recent years, there has been no requirement in Virginia that a will of lands shall be probated, and it was not necessary at common law. By the Act of February 2, 1892 (Acts 1891-2, p. 239), a *bona fide* purchaser of lands, for valuable consideration and without notice, from the heir at law of a supposed intestate is protected against a devise of the same by decedent unless the will is offered for probate within seven years after testator's death.

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**MALICIOUS PROSECUTION—MALICE, GENERAL OR SPECIAL.**—In an action for malicious prosecution, defendant asked the court to instruct the jury as follows: "By malice is meant special or particular malice, against the plaintiff, not general malice." Held, the refusal to grant this was error. *Savage v. Davis* (N. C.), 42 S. E. 571. Citing *Brooks v. Jones*, 33 N. C. 260, and differentiating actions for libel in which the same court held, in *Gattis v. Kilgo*, 128 N. C. 402, that it is not necessary that the ill will or malice should exist against the plain-